

The Gazette of India

EXTRAORDINARY PART II—Section 1 PUBLISHED BY AUTHORITY

No. 33] NEW DELHI, WEDNESDAY, OCTOBER 16, 1963/ASVINA 24, 1885

MINISTRY OF LAW (Legislative Department)

New Delhi, the 16th October, 1963/Asvina 24, 1885 (Saka)

The following Act of Parliament received the assent of the President on the 16th October, 1963, and is hereby published for general information:—

THE MAJOR PORT TRUSTS ACT, 1963

No. 38 of 1963

[16th October, 1963]

An Act to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Major Port Trusts Act, 1963. Short title, commencement and application.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It applies in the first instance to the major ports of Cochin, Kandla and Vishakhapatnam, and the Central Government may, by notification in the Official Gazette, apply the provisions of this Act to such other major port (not being the major port of Bombay, Calcutta or Madras), and with effect from such date, as may be specified in the notification.
2. In this Act, unless the context otherwise requires,— Definitions.
 - (a) “appointed day”, in relation to a port, means the date on which this Act is made applicable to that port;

(b) "Board", in relation to a port, means the Board of Trustees constituted under this Act for that port;

(c) "Chairman" means the Chairman of a Board and includes the person appointed to act in his place under section 14;

(d) "Collector of Customs" has the same meaning as in the Customs Act, 1962;

52 of 1962.

(e) "Deputy Chairman" means the Deputy Chairman of a Board and includes the person appointed to act in his place under section 14;

(f) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit-sheds, warehouses, tramways, railways and other works and things appertaining to any dock, and also the portion of the sea enclosed or protected by the arms or groyne of a harbour;

(g) "foreshore", in relation to a port, means the area between the high-water mark and the low-water mark relating to that port;

(h) "goods" includes livestock and every kind of movable property;

(i) "high-water mark", in relation to a port, means a line drawn through the highest points reached by ordinary spring-tides at any season of the year at the port;

(j) "Indian Ports Act" means the Indian Ports Act, 1908; 15 of 1908.

(k) "land" includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth;

(l) "low-water mark", in relation to a port, means a line drawn through the lowest points reached by ordinary spring-tides at any season of the year at that port;

(m) "major port" has the same meaning as in the Indian Ports Act;

(n) "master", in relation to any vessel or any aircraft making use of any port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the port;

(o) "owner", (i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and (ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charterer, consignee, or mortgages in possession thereof;

(p) "pier" includes any stage, stairs, landing place, hard, jetty, floating barge or pontoon, and any bridges or other works connected therewith;

(q) "port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act;

(r) "port approaches", in relation to a port, means those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force;

(s) "Port Trust security" means debentures, bonds or stock certificates issued by a Board in respect of any loan contracted by it under the provisions of this Act or issued by any other authority for the payment of which the Board is liable under this Act;

(t) "prescribed" means prescribed by rules or regulations made under this Act;

(u) "public securities" means—

(i) promissory notes, debentures, stock or other securities of the Central Government or of any State Government;

Provided that securities, both the principal whereof and the interest whereon have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(ii) debentures or other securities for money issued by or on behalf of any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in India (including the Port Trust securities);

(v) "rate" includes any toll, due, rent, rate, fee, or charge leviable under this Act;

(w) "regulations" means regulations made under this Act;

(x) "rules" means rules made by the Central Government under this Act;

(y) "Trustee", in relation to a port, means a member of the Board constituted for the port;

(z) "vessel" includes a caisson;

(za) "wharf" includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

CHAPTER II

BOARD OF TRUSTEES AND COMMITTEES THEREOF

Constitution
of Board of
Trustees.

3. (1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:—

(a) a Chairman to be appointed by the Central Government;

(b) a Deputy Chairman, if the Central Government deems fit to appoint one;

(c) not more than ten persons to be appointed by the Central Government from amongst persons who are in its opinion capable of representing—

(i) labour employed in the port;

(ii) the Mercantile Marine Department;

(iii) the Customs Department;

(iv) the Government of the State in which the port is situated;

(v) the Defence Services;

(vi) the Indian Railways; and

(vii) such other interests as, in the opinion of the Central Government, ought to be represented on the Board:

Provided that before appointing any person under sub-clause (i), the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Indian Trade Unions Act, 1926, and that the number of persons so appointed shall not be less than two;

16 of 1926.

(d) not more than twelve persons to be elected by such State or local bodies representing commercial, shipping or local interests as the Central Government may, from time to time, by notification in the Official Gazette, specify.

(2) A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.

(3) Every notification issued under clause (d) of sub-section (1) may also specify the number of Trustees that each of the bodies referred to in that clause may elect.

(4) The election of Trustees under clause (d) of sub-section (1) shall be held within such period as may, from time to time, be specified by the Central Government.

(5) The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4).

(6) The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette.

4. (1) Notwithstanding anything contained in section 3, the Central Government may, by notification in the Official Gazette, constitute in respect of any major port the first Board of Trustees thereof consisting of—

First Board
of Trustees.

(a) a Chairman to be appointed by the Central Government;

(b) a Deputy Chairman, if the Central Government deems fit to appoint one; and

(c) such number of other Trustees, not exceeding twenty-two, as that Government may deem expedient, to be appointed by that Government from amongst persons who are in its opinion capable of representing,—

(i) labour employed in the port;

(ii) Government of the State in which the port is situated;

(iii) Government departments specified in sub-clauses (ii), (iii), (v) and (vi) of clause (c) of sub-section (1) of section 3; and

(iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

(2) Subject to the provisions of sub-section (3), the persons appointed as Trustees under sub-section (1) shall hold office during the pleasure of the Central Government.

(3) On the constitution of the Board under section 3, the first Board of Trustees shall cease to exist.

Board to be
body cor-
porate.

5. Every Board constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued.

Disqualifi-
cation for
office of
Trustee.

6. A person shall be disqualified for being chosen as a Trustee, if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) holds any office of profit under the Board:

Provided that this disqualification shall not apply to the Chairman or Deputy Chairman;

(d) has, directly or indirectly, any share or interest in any work done by order of the Board, or in any contract or employment, with, by, or on behalf of the Board:

Provided that no person shall be deemed to have a share or interest in such work, contract or employment by reason only of his—

(i) having a share in any company or firm which may contract with or be employed by or on behalf of the Board, or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or

(iii) being interested in any loan of money to the Board, or

(iv) having a share or interest in any lease, sale, exchange or purchase of immovable property or any agreement for the same, or

(v) having a share or interest in any licence by the Board, or right by agreement or otherwise with the Board to the sole or preferential use of any railway siding or any berth for vessels in the docks belonging to the Board, or

(vi) having a share or interest in the occasional sale to the Board, to a value not exceeding ten thousand rupees in any one financial year, of any article in which he trades.

7. (1) The Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government.

Term of office of Trustees.

(2) Subject to the provisions of this Act,—

(a) every person elected or appointed by name to be a Trustee shall hold office to which he is elected or so appointed, for a term of two years commencing on the 1st day of April next following his election or appointment, as the case may be:

Provided that the term of office of a member elected to represent any body of persons shall come to an end as soon as he ceases to be a member of that body;

(b) a person appointed by virtue of an office to be a Trustee shall, until the Central Government by notification in the Official Gazette otherwise directs, continue to be a Trustee so long as he continues to hold that office.

8. (1) The Central Government shall remove a Trustee if he—

Vacation of office of Trustees.

(a) becomes subject to any of the disqualifications mentioned in section 6; or

(b) refuses to act or becomes incapable of acting; or

(c) is, without the permission of the Board previously obtained, absent from six consecutive ordinary meetings of the Board; or

(d) is absent from the meetings of the Board for a period exceeding six consecutive months; or

(e) acts in contravention of the provisions of section 19.

(2) A Trustee may resign his office by giving notice in writing to the Chairman who shall forward the same to the Central Government, and on such resignation being accepted by that Government he shall be deemed to have vacated his office.

9. Any person ceasing to be a Trustee shall, unless disqualified under section 6, be eligible for re-appointment or re-election.

Eligibility of Trustee for re-appointment for re-election.

10. (1) In the case of a vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the expiration of the term of office of such Trustee, the appointment to fill such vacancy shall be made or an election to fill such vacancy shall be completed,

Filling of vacancies in office of Trustee.

as the case may be, within two months immediately preceding the date of expiration of such term.

(2) In the case of a vacancy in the office of a Trustee appointed by the Central Government by virtue of an office, the appointment to fill such vacancy shall be made within one month of the occurrence of such vacancy.

(3) In the case of a casual vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the death of such Trustee or by virtue of the provisions of section 8, such vacancy shall be filled within one month of the occurrence thereof by appointment or election, as the case may be, in the manner hereinbefore specified:

Provided that the Trustee so appointed or elected shall retain his office so long only as the vacating Trustee shall have retained the same if such vacancy had not occurred:

Provided further that no such casual vacancy occurring within three months of the date of expiry of the normal term of office of the vacating trustee shall be filled up under this sub-section.

Saving provision for appointment of Trustee by Central Government after prescribed period.

11. Nothing in the foregoing provisions shall prevent a person being appointed by the Central Government to fill any vacancy in the office of a Trustee appointed by the Central Government after the expiration of the period specified in section 10, if for any reason it has not been possible for the Central Government to make the appointment within the said period,

Power of Central Government to extend time for election or appoint Trustees in default of election.

12. (1) If the Central Government is satisfied that an electing body has failed to elect a Trustee within the period specified therefor in sub-section (4) of section 3 or section 10 for reasons beyond its control, the Central Government may, by notification in the Official Gazette, direct that the election shall be held on or before such date as may be specified in the notification.

(2) In the event of default being made in electing any Trustee within the period specified therefor under sub-section (4) of section 3 or under section 10, or as the case may be, on or before the date specified in the notification issued under sub-section (1), it shall be lawful for the Central Government to appoint a person by notification in the Official Gazette and the person so appointed shall be deemed to be an elective Trustee.

Term of office in case of certain Trustees.

13. Where a Trustee is appointed under section 11 or under sub-section (2) of section 12 or elected in pursuance of a direction issued under sub-section (1) of section 12, the term of office of such Trustee

shall commence on the date on which his appointment or election, as the case may be, is notified in the Official Gazette and shall expire on the date on which his term of office would have expired if his appointment or election had been made within the period specified under section 10, or, as the case may be, under sub-section (4) of section 3.

14. If the Chairman or the Deputy Chairman is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Central Government may appoint another person to act in his place during his absence:

Absence of
Chairman
and Deputy
Chairman.

Provided that the Chairman or the Deputy Chairman, while on deputation outside India may, if the Central Government by order so directs and subject to such conditions and restrictions as may be specified in that order, exercise such of the powers and perform such of the duties conferred or imposed on the Chairman or the Deputy Chairman, as the case may be, by or under this Act as he may deem necessary, and the Chairman or Deputy Chairman while exercising such powers and performing such duties shall be deemed to be a Trustee notwithstanding anything to the contrary contained in this Act.

15. The Chairman and the Deputy Chairman shall be paid such salary and be governed by such terms and conditions of service as may, from time to time, be determined by the Central Government.

Conditions
of service
of Chairman
and Deputy
Chairman.

16. (1) A Board shall meet at such times and places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by rules made under this Act.

Meetings of
Board.

(2) The Chairman or, in his absence, the Deputy Chairman, and in the absence of both, any person chosen by the Trustees present from among themselves, shall preside at meetings of the Board.

(3) All questions at a meeting of the Board shall be decided by a majority of the votes of the Trustees present and voting and, in the case of an equality of votes, the person presiding shall have a second or casting vote.

(4) No business shall be transacted at any meeting of the Board unless not less than five Trustees are present throughout such meeting.

Committees
of Board.

17. (1) A Board may, from time to time, constitute from amongst the Trustees one or more committees, each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its functions as may be delegated to such committee or committees by the Board.

(2) A committee constituted under this section shall meet at such times and at such places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum) as may be provided by regulations made under this Act.

Fees and
allowances
payable to
Trustees.

18. The Trustees shall be paid by the Board such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Board as may be provided by rules made under this Act:

Provided that no fees shall be payable to the Chairman, Deputy Chairman or any other Trustee who is a servant of the Government.

Restriction
of power of
Trustees
to vote in
certain cases.

19. No Trustee shall vote or take part in the discussion of any matter coming up for consideration at a meeting of the Board or any of its committees if the matter is one in which he has any direct or indirect pecuniary interest by himself or his partner, or in which he is interested professionally on behalf of a client or as agent for any person other than the Government or a local authority or a trade union registered under the Indian Trade Unions Act, 1926.

16 of 1926.

Defects in
appoint-
ments or
election not
to invalidate
acts, etc.

20. No act or proceeding of a Board or of any of its committees shall be invalid merely by reason of—

(a) any vacancy therein or any defect in the constitution thereof, or

(b) any defect in the election or appointment of a person as a member thereof, or

(c) any Trustee having acted or taken part in any proceedings in contravention of section 19, or

(d) any irregularity in its procedure not affecting the merits of the case.

Delegation
of powers.

21. A Board may, with the approval of the Central Government, specify—

(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

(b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.

22. (1) It shall be the duty of the Chairman and the Deputy Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause. Duties of
Chairman
and Deputy
Chairman.

(2) The Chairman shall, as soon as possible, transmit to the Central Government a copy of the minutes of every meeting of the Board and shall furnish to that Government such reports, returns, documents or other information as it may, from time to time, call for.

(3) The Chairman shall exercise supervision and control over the acts of all employees of the Board in matters of executive administration and in matters concerning the accounts and records of the Board.

CHAPTER III

STAFF OF THE BOARD

23. A Board shall, from time to time, prepare and sanction a Schedule of the employees of the Board whom it deems necessary and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them. Schedule of
Board's
staff.

24. (1) Subject to the provisions of the Schedule for the time being in force sanctioned by a Board under section 23, the power of appointing any person to any post, whether temporary or permanent, shall— Power to
make
appoint-
ments.

(a) in the case of a post the incumbent of which is to be regarded as the Head of a department, be exercisable by the Central Government after consultation with the Chairman;

(b) in the case of a post [other than a post referred to in clause (a)] the maximum of the pay-scale for which (exclusive of allowances) exceeds such amount as the Central Government

may, from time to time, fix in this behalf, and where no such amount has been fixed, is not less than one thousand rupees, be exercisable by the Board;

(c) in the case of any other post, be exercisable by such authority as may be prescribed by regulations:

Provided that no person shall be appointed as a pilot at any port, who is not for the time being authorised by the Central Government under the provisions of the Indian Ports Act to pilot vessels at that port.

(2) The Central Government may, by order, specify any post the incumbent of which shall, for the purposes of this Act, be regarded as the Head of a department.

Power to promote, grant leave, etc., to employees of Board.

25. (1) Subject to any regulations made under section 28, the power of promoting, granting extension of service to, granting leave to, suspending, reducing, removing or dismissing or of disposing of any other question relating to the services of, the employees of a Board, including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised—

(a) in the case of a Head of a department or in the case of an employee holding a post referred to in clause (b) of sub-section (1) of section 24, by the Board;

(b) in any other case, by such authority as may be prescribed by regulations:

Provided that no such order, so far as the same involves extension of service, suspension, reduction in rank, removal or dismissal of a Head of a department, shall have effect until it is approved by the Central Government.

(2) Any employee of a Board (not being a Head of a department) aggrieved by an order involving his reduction in rank, removal or dismissal may, within such time and in such manner as may be provided for by regulations, prefer an appeal—

(a) to the Central Government, where such order is passed by the Board;

(b) to the Board, where such order is passed by the Chairman;

(c) to the Chairman, in any other case:

Provided that where the person who passed the order becomes, by virtue of his subsequent appointment as the Chairman, the appellate authority in respect of the appeal against the order, such person shall forward the appeal to the Board and the Board in relation to that appeal shall be deemed to be the appellate authority for the purposes of this section.

26. A Board may appoint any person as Consulting Engineer to the Board otherwise than on the basis of payment of a monthly salary, but every such appointment shall be subject to the sanction of the Central Government.

Consulting
Engineer
to Board.

27. Notwithstanding anything contained in section 23, no post other than a post referred to in clause (c) of sub-section (1) of section 24 shall be created except with the sanction of the Central Government.

Sanction of
Central
Government
necessary in
case of crea-
tion of
certain
posts.

28. A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely:—

Power to
make regu-
lations.

(a) the appointment, promotion, suspension, removal and dismissal of its employees;

(b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;

(c) the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of section 29;

(d) the time and manner in which appeals may be preferred under sub-section (2) of section 25 and the procedure for deciding such appeals;

(e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees.

CHAPTER IV

PROPERTY AND CONTRACTS

29. (1) As from the appointed day in relation to any port—

(a) all property, assets and funds vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before such day, shall vest in the Board;

Transfer of
assets and
liabilities of
Central
Govern-
ment, etc.,
to Board.

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done, by, with or for the Central Government or, as the case may be, the other authority immediately before such day, for or in connection with the purposes of the port, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board;

(c) all non-recurring expenditure incurred by the Central Government or any State Government for or in connection with the purposes of the port up to such day and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government or, as the case may be, the State Government to the Board;

(d) all rates, fees, rents and other sums of money due to the Central Government or, as the case may be, the other authority in relation to the port immediately before such day shall be deemed to be due to the Board;

(e) all suits and other legal proceedings instituted by or against the Central Government or, as the case may be, the other authority immediately before such day for any matter in relation to the port may be continued by or against the Board;

(f) every employee serving under the Central Government or, as the case may be, the other authority immediately before such day solely or mainly for or in connection with the affairs of the port shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board:

Provided that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Central Government.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employee under this section to the Board shall not entitle such employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, Tribunal or other authority. 14 of 1947.

30. As from the appointed day, all rates, fees and other charges in relation to any port, shall, unless and until they are varied by the competent authority in accordance with the provisions of this Act, continue to be levied and collected at the same rate at which they were being levied and collected by the Central Government or, as the case may be, any other authority immediately before such day.

Existing rates, etc., to continue until altered by Board.

31. A Board shall repay, at such intervals and on such terms and conditions as the Central Government may determine, the amount of capital provided under clause (c) of sub-section (1) of section 29 with interest at such rate as may be fixed by that Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

Repayment of capital with interest.

1 of 1894.

32. Whenever any immovable property which is required for the purposes of the Board cannot be acquired by agreement, the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894, and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

Procedure when immovable property cannot be acquired by agreement.

33. Subject to the provisions of section 34, a Board shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

Contracts by Board.

34. (1) Every contract shall, on behalf of a Board, be made by the Chairman and shall be sealed with the common seal of the Board:

Mode of executing contracts on behalf of Board.

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

(3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.

CHAPTER V

WORKS AND SERVICES TO BE PROVIDED AT PORTS

Power of Board to execute works and provide appliances.

35. (1) A Board may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include—

(a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, railways, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading vessels;

(d) reclaiming, excavating, enclosing and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act, or otherwise for the purposes of this Act;

(e) such breakwaters and other works as may be expedient for the protection of the port;

(f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;

(g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches;

(h) vessels, tugs or other boats for use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 42;

(i) sinking of tube-wells, and equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port;

(i) engines and other appliances necessary for the extinguishing of fires.

36. A Board may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Board and the person concerned.

Power of Board to undertake certain works.

37. (1) When any dock, berth, wharf, quay, stage, jetty or pier erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea-going vessels, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.

Power of Board to order sea-going vessels to use docks, wharves, etc.

(2) As from the date of the publication of such notification for the third time, it shall be lawful for the Board, from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty or pier, to order to come alongside of such dock, berth, wharf, quay, stage, jetty or pier for the purpose of landing and shipping goods or passengers or for landing or for shipping the same, any sea-going vessel within the port or port approaches which has not commenced to discharge goods or passengers, or which being about to take in goods or passengers, has not commenced to do so:

Provided that before making such order, the Board shall have regard, as far as possible, to the convenience of such vessel and of the shippers, in respect of the use of any particular dock, berth, wharf, quay, stage, jetty or pier:

Provided further that if the Board is not the conservator of the port, the Board shall not itself make the order as aforesaid but shall require the conservator of the port, or other person exercising the rights, powers, and authorities of the conservator of the port, to make such order.

If accommodation sufficient, all sea-going vessels compelled to use docks, wharves, etc.

38. When a sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

Power to order vessels not to come alongside of, or to be removed from, docks, wharves, etc.

39. Any officer appointed by the Board in this behalf may, in cases of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty or pier belonging to or under the control of the Board, and, if such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding one thousand rupees for each day of twenty-four hours, or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty or pier:

Provided that in the case of a vessel ordered to be removed, such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner or agent of the vessel.

Power of Central Government to exempt from obligation to use docks, wharves, etc.

40. Notwithstanding anything contained in sections 37 and 38, the Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods, at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions as the Central Government may think fit.

Board to declare when vessels other than sea-going vessels compelled to use docks, wharves, etc.

41. (1) When any dock, berth, wharf, quay, stage, jetty or pier for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels, has been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval of the Collector of Customs, by order published in three consecutive issues of the Official Gazette,—

(i) declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing or shipment of goods or passengers from or on vessels, not being sea-going vessels, and

(ii) direct that within certain limits to be specified therein it shall not be lawful, without the express sanction of the Board, to land or ship any goods or passengers out of, or into, any vessel, not being a sea-going vessel, of any class specified in such order, except at such dock, berth, wharf, quay, stage, jetty or pier.

(2) As from the date of the publication of the order mentioned in sub-section (1) for the third time, it shall not be lawful, without the consent of the Board, for any vessel of such class,—

(i) to land or ship any goods or passengers at any place within the limits so specified except at such dock, berth, wharf, quay, stage, jetty or pier; or

(ii) while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low-water mark.

(3) If after the publication of such order, any such vessel shall, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the same to be removed out of the said limits at the expense of the master or owner or agent of the vessel.

42. (1) A Board shall have power to undertake the following services:—

Performance
of services
by Board or
other person.

(a) landing, shipping or transshipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;—

(c) carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose; and

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or *vice versa*, as a railway administration under the Indian Railways Act, 1890.

9 of 1890.

(2) A Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.

(3) Notwithstanding anything contained in this section, the Board may, with the previous sanction of the Central Government, authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under section 48 or section 49 or section 50.

(5) Any such person shall, if so required by the owner, perform in respect of goods any of the said services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

(6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

9 of 1872.

(7) After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped.

Responsibility of Board for loss, etc., goods.

43. (1) Subject to the provisions of this Act, the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge shall,—

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890; and

9 of 1890.

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in section 152 of that Act:

9 of 1872.

Provided that no responsibility under this section shall attach to the Board until a receipt mentioned in sub-section (2) of section 42 is given by the Board.

(2) A Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of the receipt given for the goods under sub-section (2) of section 42.

Accommodation to be provided for customs officers in wharves, etc., appointed under customs Act.

44. Where the Collector of Customs has, under the provisions of any Act for the levy of duties of customs, appointed any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea-going vessels to be an approved place for the landing or shipping of goods or a warehouse for the storing of dutiable goods on the first importation thereof without payment of duty,

within the meaning of the first-mentioned Act, the Board shall set apart and maintain such place on or adjoining such dock, wharf, quay, stage, jetty or pier, or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.

45. Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or portion thereof at any port has, under the provisions of section 44, been set apart for the use of the officers of customs at the port, all rates and other charges payable under this Act in respect thereof, or for the storage of goods therein, shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

Dues at
customs
wharves,
etc.

46. (1) No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, erection or mooring except with the previous permission in writing of the Board and subject to such conditions, if any, as the Board may specify.

Power to
permit erec-
tion of
private
wharves,
etc., within
a port sub-
ject to con-
ditions.

(2) If any person makes, erects or fixes any wharf, dock, quay, stage, jetty, pier, erection or mooring in contravention of sub-section (1), the Board may, by notice, require such person to remove it within such time as may be specified in the notice and if the person fails so to remove it, the Board may cause it to be removed at the expense of that person.

47. (1) Where, as a result of an order published under section 38 or section 41, the use of any wharf, dock, berth, quay, stage, jetty or pier, made, fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned, by order, close, remove, fill up or destroy such wharf, dock, berth, quay, stage, jetty or pier, or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the Central Government, determine.

Compensa-
tion pay-
able in cer-
tain cases
where use of
any private
wharf,
etc., render-
ed unlawful.

(2) Save as otherwise provided under sub-section (3) no person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by an order made under sub-section (1).

(3) If it is proved to the satisfaction of the Board that any such wharf, dock, berth, quay, stage, jetty or pier, was made, fixed or erected by any person with the previous permission of the authority competent to grant such permission, he shall be paid by the Board compensation the amount of which shall be determined in the manner

and in accordance with the principles hereinafter set out, that is to say—

(a) in computing the compensation, there shall not be taken into account any rates or other charges which such person shall be liable to pay for using any wharf, dock, berth, quay, stage, jetty or pier provided by the Board;

(b) the amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty or pier;

(c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(d) where no such agreement can be reached, the Central Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;

(e) the Central Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the arbitrator in determining any question which has to be decided by him under this section, and where such nomination is made the person to be compensated may also nominate an assessor for the same purpose;

(f) at the commencement of the proceeding before the arbitrator, the Board and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(g) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid;

(h) where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons;

(i) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section;

10 of 1940.

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for examination of witnesses or documents;

(k) every award shall also state the amount of costs incurred in the arbitration proceedings under this section and by what persons and in what proportions they are to be paid;

(l) any person aggrieved by an award of the arbitrator made under this section may, within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

CHAPTER VI

IMPOSITION AND RECOVERY OF RATES AT PORTS

48. (1) Every Board shall from time to time frame a scale of rates at which, and a statement of the conditions under which, any of the services specified hereunder shall be performed by itself or any person authorised under section 42 at or in relation to the port or port approaches—

Scales of rates for services performed by Board or other person.

(a) transshipping of passengers or goods between vessels in the port or port approaches;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) craning or portering of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods, excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

Scale of rates and statement of conditions for use of property belonging to Board.

49. (1) Every Board shall, from time to time, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:—

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

Consolidated rates for combination of services.

50. A Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49.

Power to levy concessional rates in certain cases.

51. In framing scales under any of the foregoing provisions of this Chapter, the Board may prescribe a lower rate in respect of,—

(a) coastal goods, that is to say, goods, other than imported goods as defined in the Customs Act, 1962, carried in a vessel from one Indian port to another Indian port:

52 of 1962.

Provided that the Board shall not make any discrimination between one Indian port and another such port in prescribing a lower rate under this section;

(b) other goods, in special cases.

Prior sanction of Central Government to rates and conditions.

52. Every scale of rates and every statement of conditions framed by a Board under the foregoing provisions of this Chapter shall be submitted to the Central Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette.

53. A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied.

remission of rates or charges.

54. (1) Whenever the Central Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to cancel any of the scales in force or modify the same, within such period as that Government may specify in the order.

Power of Central Government to require modification or cancellation of rates.

(2) If any Board against whom a direction is made under subsection (1) fails or neglects to comply with such direction within the specified period, the Central Government may cancel any of such scales or make such modifications therein as it may think fit:

Provided that before so cancelling or modifying any scale the Central Government shall consider any objection or suggestion which may be made by the Board during the specified period.

(3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.

Refund of overcharges.

55. No person shall be entitled to a refund of an overcharge made by a Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all relevant documents:

Provided that a Board may of its own motion remit overcharges made in its bills at any time.

56. (1) When any Board is satisfied that any charge leviable under this Chapter has been short-levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Notice of payment of charges short-levied or erroneously refunded.

Provided that no such notice shall be issued after the expiry of two years,—

(a) when the charge is short-levied, from the date of the payment of the charge;

(b) where a charge has been erroneously refunded, from the date of the refund.

(2) The Board may, after considering the representation, if any, made by the person to whom notice is issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined.

Board not to
lease rates
without
sanction.

57. A Board shall not lease, farm, sell or alienate any power vested in it under this Act of levying rates without the prior sanction of the Central Government.

Time for
payment
rates on
goods.

58. Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Board, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or transhipped.

Board's lien
for rates.

59. (1) For the amount of all rates leviable by a Board under this Act in respect of any goods, and for the rent due to the Board for any buildings, plinths, stacking areas, or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods, and may seize and detain the same until such rates and rents are fully paid.

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 60, and for money payable to the Central Government under any law for the time being in force.

Ship-owner's
lien for
freight
and other
charges.

60. (1) If the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount.

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned; and godown or storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by

whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such lien, provided that the Board shall have used reasonable care in respect to the authenticity of such document.

61. (1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction such goods or so much thereof as, in the opinion of the Board, may be necessary—

Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.

(a) if any rates payable to the Board in respect of such goods have not been paid, or

(b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or

(c) if any lien of any shipowner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Official Gazette and also in at least one of the principal local daily newspapers:

Provided that in the case of animals and perishable or hazardous goods, the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency of the case admits of.

(3) If the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to him by letter delivered at such address, or sent by post, but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

(4) Notwithstanding anything contained in this section, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct.

Explanation.—In this section and section 62—

(a) "arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959;

(b) "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

Disposal of
goods not
removed
from
premises
of Board
within time
limit.

62. (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction:

Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3)-

(a) the Board may, in the case of animals and perishable or hazardous goods, give notice of removal of such goods although the period of one month or, as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale and in such manner as, in the opinion of the Board, the urgency of the case requires;

(b) arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of section 61.

(5) The Central Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this section.

63. (1) The proceeds of every sale under section 61 or section 62 shall be applied in the following order—

Application of sale proceeds.

(a) in payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 59 from the priority of the lien of the Board;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof.

(2) The surplus, if any, shall be paid on demand to the importer, owner or consignee of the goods, or to his agents.

64. (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

Recovery of rates and charges by distraint of vessel.

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

65. If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance of any vessel at the port, a notice stating that an amount therein specified is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid.

Grant of port-clearance after payment of rates.

CHAPTER VII

BORROWING POWERS OF BOARD

Power to
raise loans.

66. (1) A Board may, with the previous sanction of the Central Government and after due notification in the Official Gazette, raise loans for the purposes of this Act

Provided that no such notification shall be necessary if a loan is obtained from the Central Government or a State Government.

(2) Loans may be raised by a Board in the open market on Port Trust securities issued by it or may be obtained from the Central Government or a State Government.

(3) The terms of all loans shall be subject to the approval of the Central Government.

Port Trust
securities

67. (1) A Board may, with the sanction of the Central Government, prescribe the form in which Port Trust securities shall be issued by it and the mode in which, and the conditions subject to which, they may be transferred

(2) The holder of any Port Trust security in any form may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a Port Trust security in any other form prescribed by regulations

(3) The right to sue in respect of moneys secured by Port Trust securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

Right of
survivors of
joint or
several
payees of
securities

68. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872—

9 of 187-

(a) when any Port Trust security is payable to two or more persons jointly, and either or any of them dies, the Port Trust security shall be payable to the survivor or survivors of those persons, and

(b) when any such security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representatives of the deceased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after the appointed day.

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor

or survivors under or in respect of any security to which sub-section (1) applies.

1 of 1956.

2 of 1912.

(4) For the purposes of this section, a body incorporated or deemed to be incorporated under the Companies Act, 1956, or the Co-operative Societies Act, 1912 or any other enactment for the time being in force, whether within or without India, shall be deemed to die when it is dissolved.

69. Where two or more persons are joint holders of any Port Trust security, any one of those persons may give an effectual receipt for any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other of the holders.

Power of one or two or more joint holders to grant receipts.

26 of 1881.

70. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, no indorsement of a Port Trust security, which is transferable by indorsement, shall be valid unless made by the signature of the holder inscribed on the back of the security itself.

Indorsements to be made on security itself.

26 of 1881.

71. Notwithstanding anything in the Negotiable Instruments Act, 1881, a person shall not by reason only of his having indorsed any Port Trust security be liable to pay any money due, either as principal or as interest, thereunder.

Indorser of security not liable for amount thereof.

72. (1) The signature of the person authorised to sign Port Trust securities on behalf of the Board may be printed, engraved or lithographed or impressed by such other mechanical process, as the Board may direct, on such securities.

Impression of signature on securities.

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

73. (1) When any Port Trust security is alleged to have been lost, stolen or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss, theft or destruction it would be payable, he may, on application to the Board and on producing proof to its satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed by regulations, obtain from the Board an order for—

Issue of duplicate securities

(a) the payment of interest in respect of the security said to be lost, stolen or destroyed, pending the issue of a duplicate security; and

(b) the issue of a duplicate security payable to the applicant.

(2) An order shall not be passed under sub-section (1) until after the issue by the Board of the prescribed notification of the loss, theft or destruction.

(3) A list of the securities in respect of which an order is passed under sub-section (1) shall be published in such manner as the Board may prescribe.

(4) If at any time before the Board becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled.

Issue of converted, etc., securities.

74. (1) A Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Port Trust security or securities issued by it, on being satisfied of the justice of the claim and on delivery of the security or securities receipted in such manner and on payment of such fee, if any, as it may prescribe, convert, consolidate or sub-divide the security or securities, and issue to the applicant a new security or securities accordingly.

(2) The conversion, consolidation or sub-division referred to in sub-section (1) may be into a security or securities of the same or different classes or of the same or different loans.

Discharge in certain cases.

75. Notwithstanding anything contained in the Indian Limitation Act, 1908—

9 of 1908.

(i) on payment of the amount due on a Port Trust security on or after the date on which payment becomes due, or

(ii) when a duplicate security has been issued under section 73, or

(iii) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 74,

the Board shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate or new security or securities has or have been issued—

(a) in the case of payment—after the lapse of six years from the date on which payment was due;

(b) in the case of a duplicate security—after the lapse of six years from the date of the publication under sub-section (3) of section 73 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever date is later;

(c) in the case of a new security issued upon conversion, consolidation or sub-division—after the lapse of six years from the date of the issue thereof.

76. A Board may, from time to time, make regulations to provide for all or any of the following matters, namely:—

Power of Board to make regulations.

(a) the person, if any, authorised to sign, and the mode of affixing the corporate seal and of attestation of documents relating to Port Trust securities issued or to be issued by the Board;

(b) the manner in which payment of interest in respect of such Port Trust securities is to be made, recorded and acknowledged;

(c) the circumstances and the manner in which such Port Trust securities may be renewed;

(d) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;

(e) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;

(f) the proof which is to be produced by a person applying for duplicate securities;

(g) the form and manner of publication of the notification mentioned in sub-section (2) of section 73 and the manner of publication of the list mentioned in sub-section (3) of that section;

(h) the nature and amount of indemnity to be given by a person applying for the payment of interest on Port Trust securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Port Trust securities;

(i) the conditions subject to which Port Trust securities may be converted, consolidated or sub-divided;

(j) the amounts for which stock certificate may be issued;

(k) generally, all matters connected with the grant of duplicate, renewed, converted, consolidated and sub-divided securities;

(l) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Port Trust securities;

(m) the fees to be levied in respect of the issue of stock certificates.

Place and currency of loans raised by Board. 77. All loans contracted by a Board under this Act shall be raised in India, and in Indian currency, unless the Central Government, by notification in the Official Gazette, otherwise directs.

Security for loans taken out by Board. 78. All loans raised by a Board under this Act shall be a first charge on—

(a) the property vested, or which may hereafter during the currency of the loans become vested, in the Board other than any sum set apart by the Board as the sinking fund for the purpose of paying off any loan; and

(b) the rates leviable by the Board under this Act.

Remedies of Government in respect of loans made to Boards. 79. The Central Government or a State Government shall have in respect of loans made by it to a Board, or of loans made to any other authority for the repayment of which the Board is legally liable, the same remedies as holders of Port Trust securities issued by the Board; and such Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Port Trust securities:

Provided that where the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

Power of Board to repay loans before due date. 80. A Board may, with the previous sanction of the Central Government, apply any sums, out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of Port Trust securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived:

Provided that no such repayment shall be made of any sum less than ten thousand rupees; and that, if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

Establishment of sinking fund. 81. (1) In respect of every loan raised by a Board under this Act, which is not repayable before the expiration of one year from the date of the loan, the Board shall set apart half-yearly out of its income as a sinking fund a sum sufficient to liquidate the loan within a period which shall not in any case, unless the previous consent of the Central Government has been obtained, exceed thirty

years; but the maximum period shall not in any case exceed sixty years:

Provided that a sinking fund need not in the absence of any stipulation to that effect be established in the case of loans taken by the Board from the Central Government or any State Government.

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it for which loan the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this section.

82. (1) The sums so set apart by a Board under sub-section (1) of section 81 and the sums forming part of any sinking fund referred to in sub-section (2) of that section shall be invested in public securities or in such other securities as the Central Government may approve in this behalf, and shall be held in trust for the purposes of this Act by two Trustees, one being the Board and the other a person appointed by the Central Government.

Investment
and applica-
tion of sin-
king fund.

(2) A Board may apply the whole or any part of the sums accumulated in any sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established:

Provided that it pays into the fund in each year, and accumulates until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund, or the part of the sinking fund so applied.

83. (1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the Central Government in this behalf, and the person so appointed shall ascertain whether the cash and the current market value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated had investments been regularly made and had the rate of interest as originally estimated been obtained thereon.

Examination
of sinking
fund.

(2) A Board shall pay forthwith into the sinking fund any amount which the person appointed under sub-section (1) to conduct the annual examination of the fund may certify to be deficient, unless the Central Government specifically sanctions a gradual readjustment.

(3) If the cash and the current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1)

shall certify the amount of this excess, and the Board may, with the previous sanction of the Central Government,—

(a) withdraw the whole or any part of the certified excess in which case the Trustees in whose names the sinking fund is invested under sub-section (1) of section 82, shall forthwith transfer securities of the requisite current market value, or cash and securities of the requisite current market value, to the Board, or

(b) reduce or discontinue the half-yearly contributions to the sinking fund required under section 81, or

(c) adopt a combination of these measures.

Power of Board to raise loans on short-term bills.

84. Nothing contained in this Act shall be deemed to affect the power of the Board to raise loans under the Local Authorities Loans Act, 1914.

9 of 1914.

Power of Board to take temporary loans or overdrafts.

85. Notwithstanding anything contained in this Act, a Board may borrow moneys by means of temporary overdraft or otherwise by pledging the securities held by the Board in its reserve funds or on the security of the fixed deposits of the Board in its banks:

Provided that such temporary overdrafts or other loans—

(a) shall not at any time have a longer currency than six months; and

(b) shall not be taken, without the previous sanction of the Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds such amount not exceeding ten lakhs of rupees, as the Central Government may fix in this behalf:

Provided further that all moneys so borrowed by temporary overdrafts or otherwise shall be expended for the purposes of this Act.

Power of Board to borrow money from International Bank for Reconstruction and Development or other foreign institutions.

86. Notwithstanding anything contained in this Act or any other law for the time being in force, a Board may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other bank or institution in any country outside India; and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Central Government otherwise provide.

CHAPTER VIII

REVENUE AND EXPENDITURE

87. All moneys received by or on behalf of a Board under the provisions of this Act, and all moneys received by it as the Conservator of the port and of the port approaches or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act excluding all fees and all fines and penalties creditable to the pilotage account of the port under sub-section (5a) of that section, shall be credited to a fund called the general account of the port.

88. (1) The moneys credited to the general account under section 87, shall, subject to the provisions of section 89 of this Act and of section 36 of the Indian Ports Act, be applied by the Board in payment of the following charges, namely:—

(a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable, and payments to the sinking fund established for such loan;

(b) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to—

(i) the Chairman, Deputy Chairman and other Trustees;

(ii) the employees of the Board; and

(iii) the surviving relatives, if any, of such employees;

(c) the contributions, if any, payable to the Central Government or any State Government on account of the pension and leave allowance of any officer lent to the Board by such Government;

(d) the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident or welfare fund or loan or special fund established by the Board;

(e) the contributions, if any, duly authorised to be made by regulations made under this Act to any such fund as is referred to in clause (d);

(f) any charges for which the Board may be liable under section 108 or section 109;

(g) such sums as may, from time to time, be agreed upon by the Board and a State Government as a reasonable contribution payable by the Board towards the expenses in connection

with the watch and ward functions of the police force which the State Government may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(h) the cost of repairs and maintenance of the property belonging to or vested in the Board and all charges upon the same and all working expenses;

(i) the cost of the execution and provision of any new work or appliance specified in section 35 which the Board may determine to charge to revenue;

(j) any expenditure incurred under section 36;

(k) any other expenditure which may be incurred by the Board generally for the purposes of this Act;

(l) any other charge which may on the application of the Board be specially sanctioned by the Central Government or for which the Board may be legally liable.

(2) All moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub-section (1) shall—

(a) be deposited in the State Bank of India or in such scheduled bank or banks, and subject to such conditions as may, from time to time, be specified by the Central Government; or

(b) be invested in public securities or in such other securities as the Central Government may approve in this behalf; and the said securities shall be held in trust by the Board for the purposes of this Act.

Power to transfer moneys from general account to pilotage account and vice versa.

89. A Board may, with the previous sanction of the Central Government, apply any sum out of the moneys credited to the general account of the port towards meeting deficits, if any, in the pilotage account of the port maintained under section 36 of the Indian Ports Act or transfer the whole or part of any surplus funds in such pilotage account to the general account of the port.

Establishment of reserve funds.

90. (1) A Board may, from time to time, set apart such sums out of its surplus income as it thinks fit, as a reserve fund or funds for the purpose of expanding existing facilities or creating new facilities at the port or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwreck or other accident or for any other emergency arising in the ordinary conduct of its work under this Act.

Provided that the sums set apart annually in respect of, and the aggregate at any time of, any such reserve fund or funds shall not exceed such amounts as may, from time to time, be fixed in that behalf by the Central Government.

(2) Any such reserve fund or funds may be invested in public securities or in such other securities as the Central Government may approve in this behalf.

91. (1) For the purposes of any investment which a Board is authorised to make by this Act, it shall be lawful for every Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Central Government has been given, provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

Power to reserve Port Trust securities for Board's own investments.

(2) The issue by any Board of any such securities direct to and in the name of the Board shall not operate to extinguish or cancel such securities, but every security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(3) The purchase by a Board, or the transfer, assignment or indorsement to a Board or to the Trustees of the sinking fund set up by a Board, of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred or assigned or indorsed to, any other person.

92. (1) No expenditure shall be charged by a Board to capital without the previous sanction of the Central Government:

Prior sanction of Central Government to charge expenditure to capital.

Provided that a Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified, and subject to such conditions as may be imposed, by the Central Government.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the Central Government unless the excess is more than ten per cent. of the expenditure so sanctioned.

93. (1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Central Government in this behalf, shall be commenced or provided by a Board, nor shall any contract be entered into by a Board in respect of any such new

Works requiring sanction of Board or Central Government

work or appliance until a plan of, and estimate for, such work or appliance has been submitted to, and approved by, the Board; and, in case the estimated cost of any such new work or appliance exceeds such amount as may, from time to time, be fixed by the Central Government in this behalf, the sanction of the Central Government to the plan and estimate shall be obtained before such work is commenced or appliance provided.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred does not exceed by more than ten per cent., the estimated cost so sanctioned.

Powers of
Chairman as
to execu-
tion of
works.

94. Notwithstanding anything contained in section 93, the Chairman may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works but in every such case the Chairman shall, as soon as possible, make a report to the Board of any such directions given or contracts entered into by him.

Power of
Board to
compound or
compromise
claims.

95. Every Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient:

Provided that no settlement shall be made under this section without the previous sanction of the Central Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Central Government in this behalf.

Writing off
of losses.

96. (1) Subject to such conditions as may be specified by the Central Government, where a Board is of opinion that any amount due to or any loss, whether of money or of property, incurred by, the Board is irrecoverable, the Board may, with the previous approval of the Central Government, sanction the writing off finally of the said amount or loss:

Provided that no such approval of the Central Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case, five thousand rupees or in the aggregate in any year, one lakh of rupees.

(2) Notwithstanding anything contained in sub-section (1), where the Chairman is of opinion that any amount due to, or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Chairman may sanction the writing off finally of such amount or loss provided that such amount or loss does not

exceed, in any individual case, one thousand rupees or in the aggregate in any one year, twenty thousand rupees; and in every such case the Chairman shall make a report to the Board giving reasons for such sanction.

97. All the powers, authorities and restrictions contained in this Act in respect of the works by this Act authorised, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act, not being works the cost of which is chargeable to the pilotage account of the port under sub-section (5b) of that section, and also to the sanction of such works, the estimates therefor, and the expenditure thereunder.

Powers, etc., of Board as Conservator or Body appointed under section 36 of Indian Ports Act.

98. (1) A Board shall, on or before the thirty-first day of January in each year, hold a special meeting at which the Chairman of the Board shall submit an estimate of the income and expenditure of the Board for the next financial year, in such form as the Central Government may specify.

Budget estimates.

(2) A copy of such estimate shall be sent by post or otherwise to each Trustee so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1).

(3) The Board shall consider the estimate at such meeting and may provisionally approve of it with or without modifications.

(4) The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the Central Government.

(5) The Central Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.

(6) When an estimate is returned under sub-section (5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the Central Government may call for and shall, if necessary, modify or alter the estimate and resubmit it to the Central Government.

(7) The Central Government shall sanction the estimate with or without modifications.

(8) Where any such estimate is not sanctioned by the Central Government before the commencement of the financial year to which it relates, the Central Government may authorise the Board to incur

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such expenditure as may be necessary in the opinion of the Central Government until such time as the approval of the estimate by the Central Government is communicated to the Board.

Preparation
of supple-
mental esti-
mates.

99. A Board may in the course of any year for which an estimate has been sanctioned by the Central Government cause one or more supplemental estimates for the residue of such year to be prepared, and the provisions of section 98 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

Re-appro-
priation of
amounts in
estimate.

100. Subject to any directions which the Central Government may give in this behalf, any sum of money or part thereof of which the expenditure has been authorised in an estimate for the time being in force sanctioned by the Central Government and which has not been so spent, may at any time be reappropriated by the Board to meet any excess in any other expenditure authorised in the said estimate:

Provided that no such reappropriation shall be made from one major head of expenditure to another such head without the previous sanction of the Central Government.

Adherence
to estimate
except in
emergency.

101. (1) Subject to the provisions of section 100, no sum exceeding such amount as the Central Government may fix in this behalf shall, save in cases of pressing emergency, be expended by, or on behalf of, any Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Central Government.

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by any Board on a pressing emergency, the circumstances shall be forthwith reported by the Chairman to the Central Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

Accounts
and audit.

102. (1) A Board shall maintain proper accounts and other relevant records and prepare the annual statement of accounts including the balance-sheet in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited once in every year by the Comptroller and Auditor-General of India or such other persons as may be appointed by him in this behalf and he shall in respect of such audit be paid by the Board such amount as the Central Government may determine and such amount shall be debitable to the general account of the Board.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of a Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books of accounts, connected vouchers and other documents of the Board.

103. (1) Within fourteen days after the audit and examination of the accounts of a Board have been completed, the Comptroller and Auditor-General of India shall forward copies of the audit report to the Central Government and to the Board. Publication of audit report.

(2) The Central Government shall cause every audit report to be laid for not less than thirty days before each House of Parliament as soon as may be after such report is received by that Government.

104. Every Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the Comptroller and Auditor-General of India in the audit report on the income and expenditure of the Board and shall take such action thereon as the Board may think fit and shall also send a report of the action so taken to the Central Government. Board to remedy defects and irregularities pointed out in audit report.

105. If there is a difference of opinion between any Board and the Comptroller and Auditor-General of India on any point included in the audit report, and the Board is unable to accept and implement the recommendations, if any, made by him on such point, the matter shall forthwith be referred to the Central Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders. Central Government to decide difference between Board and auditors.

CHAPTER IX

SUPERVISION AND CONTROL OF CENTRAL GOVERNMENT

106. As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the Central Government, every Board shall submit to the Central Government a detailed report of the administration of the port during the preceding year ending on the thirty-first day of March, in such form as the Central Government may direct, Administration report.

Submission
of statements
of income
and expendi-
ture to
Central
Govern-
ment.

107. (1) Every Board shall annually, or oftener if directed by the Central Government so to do, submit statements of its income and expenditure in such form and at such time as that Government may direct.

(2) A copy of all such statements shall be open to the inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may from time to time be fixed by the Board.

Power of
Central
Government
to order
survey or
examination
of works of
Board.

108. The Central Government may, at any time, order a local survey or examination of any works of a Board, or the intended site thereof and the cost of such survey and examination shall be borne and paid by the Board from and out of the moneys credited to the general account of the port.

Power of
Central
Government
to restore or
complete
works at the
cost of
Board.

109. If, at any time, any Board—

(a) allows any work or appliance constructed or provided by, or vested in, the Board to fall into disrepair; or

(b) does not, within a reasonable time, complete any work commenced by the Board or included in any estimate sanctioned by the Central Government; or

(c) does not, after due notice in writing, proceed to carry out effectually any work or repair or to provide any appliance which is necessary in the opinion of the Central Government for the purposes of this Act,

the Central Government may cause such work to be restored or completed or carried out, or such repairs to be carried out or such appliance to be provided, and the cost of any such restoration, completion, construction, repair or provision shall be paid by the Board from and out of the moneys credited to the general account of the port.

Power of
Central
Government
to supersede
Board.

110. (1) If, at any time, the Central Government is of opinion—

(a) that on account of a grave emergency, any Board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law, or

(b) that the Board has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such

default, the financial position of the Board or the administration of the port has greatly deteriorated,

the Central Government, may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give a reasonable time of not less than three months to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the Trustees shall, as from the date of supersession, vacate their offices as such Trustees;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Board, shall until the Board is reconstituted under clause (b) or clause (c) of sub-section (3) be exercised and performed by such person or persons as the Central Government may direct;

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary, or

(b) reconstitute the Board by fresh appointment and fresh election, and in such case, any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for appointment or election, as the case may be, or

(c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case, the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for such appointment merely because they were Trustees when the Board was superseded;

Provided that the Central Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest possible opportunity.

Power of
Central
Government
to issue
directions
to Board.

111. (1) Without prejudice to the foregoing provisions of this Chapter, every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

CHAPTER X

PENALTIES

Persons
employed
under this
Act to be
public ser-
vants for
certain pur-
poses.

112. Every person employed by a Board under this Act shall, for the purposes of sections 161 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1947 be deemed to be a public servant within the meaning of section 21 of the said Code.

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Penalty for
contraven-
tion of
sections 37,
38, 40 and
41.

113. Whoever contravenes the provisions of any order issued under section 37 or section 38 or section 41 or fails to comply with any condition imposed under section 40 shall be punishable with fine which may extend to one thousand rupees, and where the contravention or failure is a continuing one, with further fine which may extend to one hundred rupees for every day after the first during which such contravention or failure continues.

Penalty for
setting up
wharves,
quays, etc.,
without
permission.

114. Any person who contravenes the provisions of section 46 shall be punishable with fine which may extend to one thousand rupees for the first contravention, and with a further fine which may extend to one hundred rupees for every day after the first during which the contravention continues.

115. Any person who, with the intention of evading payment of the rates lawfully due, in respect of any goods or vessel carrying any goods, to the Board— Penalty for evading rates, etc

(a) understates or incorrectly gives the weight, quantity, value or description of such goods or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or

(b) removes or attempts to remove or abets the removal of such goods or such vessel;

shall be punishable with fine which may extend to twice the amount of rates so due subject to a minimum of fifty rupees.

116. If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of any Board, the amount of such damage shall, on the application of the Board be recoverable, together with the cost of such recovery, by distress and sale, under a Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel: Recovery of value of damage to property of Board.

Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

117. Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder, for the contravention of which no penalty is expressly provided thereunder, shall, be punishable with fine which may extend to two hundred rupees. Other offences.

118. No court inferior to that of a magistrate of the first class shall try any offence punishable under this Act or any rule or regulation made thereunder. Cognizance of offences.

119. (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be Offences by companies.

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XI

MISCELLANEOUS

Limitation of proceedings in respect of things done under the Act. **120.** No suit or other proceeding shall be commenced against a Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months after the accrual of the cause of action.

Protection of acts done in good faith. **121.** No suit or other legal proceeding shall lie against a Board or any member or employee thereof in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to or under the control of the Board.

Power of Central Government to make rules. **122.** (1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely:—

(a) the times and places of the meetings of a Board and the procedure to be followed for the transaction of business at such meetings;

(b) the fees and allowances payable to the members of a Board or of its committees;

(c) any other matter in respect of which rules may be made by the Central Government.

(2) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

123. Without prejudice to any power to make regulations contained elsewhere in this Act, a Board may make regulations consistent with this Act for all or any of the following purposes, namely:—

General power of Board to make regulations.

(a) for the times and places of the meetings of its committees and for the procedure to be followed for the transaction of business at such meetings;

(b) for the form and manner in which contracts shall be made by the Board;

(c) for the form of receipt to be given under sub-section (2) of section 42;

(d) for the period within which notice may be given under sub-section (2) of section 43;

(e) for the guidance of persons employed by the Board under this Act;

(f) for the safe and convenient use of the docks, wharves, quays, jetties, sheds, warehouses, railways, tramways and other works constructed by or vested in the Board under this Act;

(g) for the reception, portorage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board; and for declaring the procedure to be

followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;

(h) for keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

(i) for the mode of payment of rates leviable by the Board under this Act;

(j) for regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;

(k) for regulating the manner in which, and the conditions under which, the loading and unloading of all vessels within the port or port approaches shall be carried out;

(l) for regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;

(m) for the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;

(n) for ensuring the safety of the port;

(o) generally, for the efficient and proper administration of the port.

Provisions
with respect
to regula-
tions.

124. (1) No regulation made by the Board under this Act shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

(2) No such regulation shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that Gazette.

(3) Any regulation made under this Act other than a regulation made under section 28 may provide that a breach thereof shall be punishable with fine which may extend to two hundred rupees, and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which such breach continues.

125. (1) Whenever the Central Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to make any regulations for all or any of the matters specified in section 28 or section 76 or section 123 or to amend any regulations, within such period as the Central Government may specify in this behalf:

Power of Central Government to direct regulations to be made or to make regulations.

Provided that the Central Government may extend the period specified by it by such period or periods as it may consider necessary.

(2) If any Board, against whom a direction is issued by the Central Government under sub-section (1), fails or neglects to comply with such direction within the period allowed under sub-section (1), that Government may make the regulations or amend the regulations, as the case may be, either in the form specified in the direction or with such modifications thereof as the Central Government may think fit:

Provided that before so making or amending the regulations the Central Government shall consider any objection or suggestion made by the Board within the said period.

(3) Where in pursuance of sub-section (2), any regulations have been made or amended, the regulations so made or amended shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.

126. Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Central Government and shall have effect on being published in the Official Gazette.

Power of Central Government to make first regulations.

127. The text of the regulations made under clauses (e) to (n) of section 123 and the scale of rates together with a statement of conditions framed by any Board under Chapter VI shall be prominently posted by the Board in English, in Hindi and in the regional language on special boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

Posting of certain regulations, etc.

128. Nothing in this Act shall affect—

(1) the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of a Board, or

Saving of right of Central Government and municipalities to use wharves, etc., for

collecting
duties and
of power of
Customs
Officers.

Application
of certain
provisions
of the Act
to aircraft.

Power to
evict certain
persons from
the premises
of Board.

(2) any power or authority vested in the customs authorities under any law for the time being in force.

129. The provisions of sections 35, 37, 38, 39, 40, 41, 42, 48, 49, 50, 64, 65, 115, 121, 123 and 124 shall apply in relation to all aircraft making use of any port while on water as they apply in relation to vessels.

130. (1) Notwithstanding anything contained in any other law for the time being in force, if a Board in exercise of the powers conferred on it by regulations made under this Act cancel the allotment of any premises made to any employee of the Board, the Board may, by notice in writing, order such allottee or any other person who may be in occupation of the whole or any part of the premises to surrender or deliver possession thereof to the Board or a person appointed by the Board in that behalf within such period as may be specified in the notice.

Explanation.—For the purposes of this section, “premises” means any building or part of a building and includes—

(i) the gardens, grounds and out-houses, if any, appertaining to such building or part of a building;

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; and

(iii) any furniture, books or other things belonging to the Board and found in such building or part of a building.

(2) If any allottee or other person refuses or fails to comply with an order made under sub-section (1), any magistrate of the first class may, on application made by or on behalf of the Board, order any police officer, with proper assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Board or a person appointed by the Board in that behalf and the police officer may, for the purpose, use such force as may be necessary.

(3) Any such notice as is referred to in sub-section (1) may be served—

(a) by delivering or tendering it to the allottee or any other person who may be in occupation of the whole or any part of the premises, or

(b) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises, or

(c) by registered post.

131. Without prejudice to any other action that may be taken under this Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Board under this Act or under any regulations made in pursuance thereof.

Alternative
remedy by
suit.

132. (1) Any requirement in this Act that a notification, order, rule or regulation issued or made by a Board or by the Central Government shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule or regulation shall—

Require-
ments as to
publication
of notifica-
tion;
orders, etc.,
in the
Official
Gazette.

(a) where it is issued or made by the Board, be published in the Official Gazette of the State in which the port is situated, and

(b) where it is issued or made by the Central Government, be published in the Gazette of India.

(2) Any notification, order, rule or regulation issued or made by the Central Government shall, for general information, be also republished in the Official Gazette of the State in which the port is situated.

133. (1) On the application of this Act to the port of Kandla, the Bombay Landing and Wharfage Fees Act, 1882 shall cease to have force in relation to that port.

Bombay Act
7 of 1882.

(2) On the application of this Act to the ports of Cochin and Vishakhapatnam, the Madras Outports Landing and Shipping Fees Act, 1885 shall cease to have force in relation to those ports.

Madras Act
3 of 1885.

(3) If immediately before the application of this Act to any other port, there is in force in that port any law which corresponds to this Act or to any provision thereof, that corresponding law shall, on such application, cease to have force in relation to that port.

Power to
remove
difficulties.

134. If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

R. C. S. SARKAR,
Secy. to the Govt. of India.